



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS-2016-0065]

RIN 0579-AE41

Deregulation of Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, without change, a proposal to amend our regulations to remove the domestic pine shoot beetle (PSB) quarantine and to eliminate the restrictions that apply to the importation of PSB host material from Canada. We have determined through analysis that the regulatory program is ineffective in slowing the spread of the pest and reducing damage, which has also been found to be minimal. This action will provide flexibility to the States as they manage PSB. It will also allow Federal resources spent on this program to be allocated elsewhere, and it will remove PSB-related interstate movement and importation restrictions on PSB-regulated articles.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Bill Wesela, National Policy Manager,

PPQ, APHIS, 4700 River Road Unit 22, Riverdale, MD 20737-1236; (301) 851-2229;

William.D.Wesela@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle (PSB, *Tomicus piniperda*) is a pest of pines in Africa, Asia, and Europe. Biologically, this species of bark beetle is considered to be a secondary pest of pine and not able to successfully attack healthy trees. PSB colonizes fresh timber and dying pine trees in early spring. Larvae feed within the galleries under the bark and emerge as adults from shoots after a hard frost. They then move to the base of the tree to reproduce.

PSB was first detected in the United States in a Christmas tree farm in Ohio in 1992. Based on an initial finding of potentially high economic losses in 1992, the Animal and Plant Health Inspection Service (APHIS) implemented a program to regulate at-risk pine commodities, including logs with bark, Christmas trees, and nursery stock in known infested areas.

The regulations in “Subpart G—Pine Shoot Beetle” (7 CFR 301.50 through 301.50-10, referred to below as the regulations) had restricted interstate movement of certain regulated articles (generally wood and wood products) from quarantined areas in order to prevent spread of PSB into non-infested areas of the United States.

Since APHIS initiated the PSB program in 1992, PSB has advanced at a slow rate, and damage to native pines, plantations, and the nursery trade has been minimal. In 2015, APHIS met with the National Plant Board, which represents plant protection divisions of State departments of agriculture, to reassess the relevance and need for the PSB regulatory program. This was due to the slow advancement and minimal damage of PSB and the limited resources allotted to the PSB program.

We prepared an analysis of regulatory options, “Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus): Analysis of Regulatory Options” (February 2015), referred to below as the February 2015 analysis, to evaluate the PSB program in terms of its effectiveness and efficiency in slowing the spread and reducing losses. The analysis looked at timber losses and estimated compliance costs that Christmas tree growers incur in quarantined areas. Given the little PSB damage observed and the amount of resources allocated to manage the minimal risks associated with PSB, we determined it appropriate to deregulate PSB. While the possibility exists that PSB may spread at a faster rate and enter Southern States sooner in the absence of Federal regulations, we anticipated that PSB would be controlled within managed timber stands in the South.

Accordingly, in a proposed rule¹ published in the *Federal Register* on September 23, 2019 (84 FR 49680-49681, Docket No. APHIS-2016-0065), we proposed to remove the domestic PSB quarantine and the restrictions that apply to importation of PSB host material from Canada. We solicited comments concerning our proposal for 60 days ending November 22, 2019.

We received 10 comments by the close of the comment period. They were from private citizens and one State forestry.

Of the commenters, six opposed deregulation and the proposed rule. The remaining four commenters urged caution in deregulation, raising concerns similar to those opposed. One of these latter commenters recognized the positive economic impacts of deregulation on the industry, yet still pressed PSB concerns.

¹ To view the proposed rule, its supporting documents, and the comments that we received, go to <https://www.regulations.gov/docket?D=APHIS-2016-0065>.

Comments fell into seven distinct categories: Concern for natural forestland protection; support for the current regulations out of perception that they work; concern for the pine industry and economy; concerns for future impacts of PSB; concerns regarding reallocation of regulatory funding; requests for delay or phase-in of deregulation with monitoring and assessment before action; and requests that science direct regulation of PSB.

We have characterized the comments received below according to these topics.

Natural Forestland Protection

A majority of the 10 commenters wanted continued regulation to prevent PSB from inflicting pine tree losses on “natural” and wild forests, as well as private lands. Some addressed vulnerability of pine to PSB impact on tree trunks. Two commenters expressed concern over what they considered the growth-stunting potential of PSB in harming shoots of pine trees. The commenters stated that this is significant in that shoots are means of photosynthesis, energy conversion, and thus growth, which could impact yields and incomes.

We acknowledge that PSB can inflict damage on pine trees and that it is a plant pest. Our February 2015 analysis did not state otherwise. The analysis also reviewed studies that showed adult PSB prefers to colonize freshly-cut stumps and slash. Nonetheless, the analysis concluded that pine-stand owners and the industry can and do cover trees, remove downed trees, and treat pine for PSB in a manner that is more cost-effective than ongoing Federal regulation. As detailed in our February 2015 analysis, estimation and comparison of pine timber damage along the leading edge of PSB distribution, both with and without a “slow-the-spread” regulatory effort, indicates regulatory cost will exceed any avoided losses. Compliance costs projected long into the future outweigh any possible benefits to pine producers.

There is also no evidence that in attacking the shoots of pine this beetle has broadly retarded maturity across pine timber stands and negatively impacted growth, vitality, and yields. While PSB does inflict damage on pine shoots, and especially on certain pine varieties, initial fears that the pest would devastate pine forests and their industry never came true.

Regulatory Efficacy

Several commenters either presumed regulation is preventing spread within or from quarantined areas, or mistakenly believed PSB numbers are declining under regulation.

We are making no changes in response to these comments. Our February 2015 analysis demonstrates that despite regulatory efforts that have spanned 28 years, PSB has spread from a single Christmas tree farm in one State (Ohio) in 1992 to 20 States. Fourteen States are presently under Federal quarantine in their entirety.

While regulation did not keep PSB from spreading, we still find PSB damage to native pines and pine plantations, as well as costs to the nursery trade in this broad area, to be minimal. Our February 2015 analysis for deregulation indicated the pest is now considered minor and readily within State and local ability to manage.

Pine Industry and Economy

Four of the commenters expressed concern for the pine economy as a result of PSB deregulation. One commenter questioned especially the impact on the Christmas tree industry from possible increased cosmetic damage on certain species of pine.

We find no evidence of such negative economic impacts to justify changing deregulation as proposed. Our February 2015 analysis demonstrated that despite PSB's spread, damage has been minor. Additionally, as experience now long indicates, pine producers can and do take

steps to control the disease irrespective of Federal regulation. States may also impose and enforce their own quarantines in the absence of Federal regulation.

Our analysis found nothing to suggest PSB is singularly destructive, nor did it find evidence of high level destructive or economic impact. So many more pests of far greater impact have prompted regulatory efforts since PSB's first detection 28 years ago.

Future PSB Impacts

Half of the 10 commenters on PSB deregulation voiced concern for a range of possible negative future impacts. Two commenters suggested deregulation will result in high tree mortality in higher density forests (from higher stress on weakened, dying trees, even on healthy trees).

One commenter addressed deregulatory impact on pine tree forests in the Southeastern States. The commenter feared PSB spread following deregulation will have a negative economic impact there, where the warmer climate will allow two incubation periods per year, instead of one; where storms are more frequent and violent, downing trees to create PSB brooding conditions; and where pine stands are large and dense.

Two other commenters feared PSB spread to pinewood forests in the Western States. One acknowledged positive impacts on timber producers once they are freed from time-consuming, expensive regulatory compliance. However, the commenter feared possible negative impact on Western pine forests and urged "Early Detection and Rapid Response" funding.

We understand these concerns, but we are making no changes to PSB deregulation. The commenters concerned about establishment in high density forests and Southeastern pine tree forests incorrectly assume the PSB damage has been minimal to date because PSB has become established in areas that are not densely populated with pine or are not otherwise conducive to

PSB establishment. However, thus far, even in pine-dense regions where PSB has become endemic, PSB damage to native pines, plantations, and nursery trade has been minimal. Estimated compliance costs for Christmas tree growers have far outweighed timber losses. Moreover, Federal regulatory requirements for PSB have largely consisted of certification, inspection, and permitting. These activities control the artificial spread of PSB but are not aimed at controlling it within an affected region. It is the pine industry's own practices that control PSB within such an area. Pine producers apply cover spray on trees, destroy cell piles, remove stumps, and use trap logs to attract broods into piles that they then destroy.

With regard to westward movement, the nation's Great Plains region (more than 1.12 million square miles of prairie, steppe and grasslands, with negligible quantities of pine), has provided and will continue to provide a natural barrier to PSB spread to the West. Western States are also free to fashion their own PSB regulation in the absence of Federal regulation and to promote the industry practices that pine producers already effectively employ in the Northeast and Central States.

Funding Concerns

Four of 10 commenters either asked that regulatory funds be preserved to protect pine production and the natural environment from PSB's harm, or sought evidence that funding reallocation will be more beneficial. Commenters said regulation is worthwhile and should be prioritized. They stated costs to the public are worth controlling PSB populations.

Our February 2015 analysis found that costs to producers in complying with quarantines, paperwork, and recordkeeping to manage agreements, data collection, and review for reporting all outweigh any benefits. Both assessments that we conducted call for new strategies, which the States and producers may undertake from the success of localized approaches.

The pine industry is largely composed of small businesses and producers who can better safeguard pine resources, products, and their economy if they do not have to devote time and resources to meeting permit, certificate, and form compliance costs under quarantine. We have determined that removing the PSB quarantine will provide flexibility to the States as they and the pine community manage PSB in all regions.

Funding used for PSB, which has become less and less significant even as the pest spread despite regulation, will be reallocated to address worsening Japanese beetle problems nationally. APHIS' Japanese beetle regulations control the movement of aircraft from regulated areas to southern and western areas where Japanese beetle is not located, but could become established, if introduced, and cause economic losses. However, increased package and product shipping across the United States has created another pathway for Japanese beetle movement into Southern and Western States. APHIS is working with a National Plant Board harmonization initiative to address this problem, and the reprogrammed funds will be used to help address this issue by increasing inspection and treatment for Japanese beetle.

Delay or Phase-in of Deregulation

Four of the comments counseled more cautious approaches to regulatory change and PSB control. Three sought delay or a phase-in of deregulation, with monitoring of impact on PSB losses and harm before entirely deregulating. One commenter suggested allocating funds for damage control at conclusion of a phase-out of regulations.

While we recognize the value of cautionary approaches protective of natural resources, we find no basis to continue regulation. Deregulating PSB is based on 28 years of experience showing PSB regulation has not deterred spread of the pest. Yet neither widespread destruction nor significant economic loss resulted. Our February 2015 analysis demonstrated that funding is

being ineffectively used to deter PSB. Projected well into the future, the cost of regulation outweighs any avoided negative losses. It will cost producers more in compliance than they realize in any economic benefit. Prolonging this cost to largely small producers a few more years is neither justifiable, nor defensible. We must invite new strategies other than Federal regulation, recognizing local pine industry practices have been most effective at minimizing PSB damage. Moreover, continued regulation precludes our reprogramming the funds for PSB to Japanese beetle control, which, as discussed above, is needed to address an emerging pathway for the spread of Japanese beetle.

We will however, continue to support the Nature Conservancy's "Don't Move Firewood" campaign, which is credited with a broad education effort to enlist the public in curbing the spread of PSB and other pests of firewood. That effort will continue even after PSB deregulation. States are also free to attempt their own PSB regulation, and one State has already stated that it will. As the pine industry, processing, and trade have demonstrated where PSB spread across the Northern State regions, their treatments in the field and handling of harvested material, diminish PSB impact and loss. States and the industry need to help shift PSB strategies now away from national regulation as present funding addresses pressing Japanese beetle expansion.

Scientific Basis for Deregulation

Two commenters asserted that official studies have not been conducted to justify deregulation. They said the public needs scientific studies conducted to determine current PSB populations and losses under regulation. They said careful analysis based on scientific findings could then form a basis for addressing permanent changes that will result from deregulation.

We acknowledge need for more research to address many domestic pests. However, APHIS Plant Protection and Quarantine, Center for Plant Health Science and Technology (now named Science and Technology), and the Plant Epidemiology and Risk Laboratory did conduct the February 2015 analysis of regulatory options for this deregulation. Our analysis drew on 46 citations to assess the physical and economic impact of PSB and to project possible impact of deregulation on other regions. We also consulted with the National Plant Board.

Therefore, for the reasons given, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website.

APHIS is amending the pine shoot beetle (PSB) regulations to remove all Federal PSB quarantine areas and all Federal regulatory requirements related to the import and movement of PSB and associated host material. Although PSB is now found throughout the Northeast and North Central United States, damage to native pines and pine plantations and costs to the nursery

trade have been minimal. It is now considered a minor pest that can be readily controlled locally.

Establishments that may be affected are ones that grow, handle, or move regulated pine (*Pinus* spp.) products: bark products, Christmas trees, logs and firewood with bark attached, lumber with bark attached, nursery stock, raw pine materials for pine wreaths and garlands, and stumps. Potentially affected establishments include timber tract operations, forest product operations, logging companies, forest tree nurseries, and Christmas tree operations. The majority of these establishments are small entities.

Regulated articles from PSB quarantined areas may be moved interstate if accompanied by a certificate or limited permit. Under the rule, affected establishments in the Federal PSB quarantine areas will no longer incur costs of complying with certification or permitting requirements. Businesses that operate under Federal PSB compliance agreements, of which there are about 100, are the establishments most likely to be shipping regulated articles interstate. With this rule, they will forgo the paperwork and recordkeeping costs of compliance. For affected entities that do not operate under compliance agreement, the costs of inspection are incurred by APHIS, unless they occur outside of normal working hours.

We estimate that an establishment with an active PSB compliance agreement spends 4 to 8 hours annually collecting data and ensuring adherence to the agreement. Based on this estimate, total annual cost savings from PSB deregulation for establishments with active compliance agreements could be between \$12,480 and \$59,600. In accordance with guidance on complying with Executive Order 13771, the single primary estimate of the cost savings of this rule is about \$36,000, the mid-point estimate annualized in perpetuity using a 7 percent discount rate.

Besides yielding cost savings for entities with compliance agreements, sales volumes for at least some businesses could increase if their sales are constrained because of the Federal quarantine. Restrictions ultimately borne will depend on whether States decide to enforce their own PSB quarantine programs.

Internationally, the deregulation is unlikely to affect exports of pine products. In 2018, the United States exported about \$240 million of pine logs and timber, of which \$75 million were Christmas trees and other plants used for ornamental purposes. However, these exports are required to be treated otherwise for pine wood nematode under a systems approach and accompanied by a phytosanitary certificate as proof that the trees meet the importing countries' requirements, as documented in International Standards for Phytosanitary Measures No. 12.

Longer term, any delay in PSB spread attributable to the quarantine regulations will end with promulgation of the rule. It is possible that without the PSB program, human-assisted dispersal of PSB would have occurred more rapidly and extended to areas that are not yet infested; the impact of the rule on pine populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process pine products—is indeterminate. Still, PSB has caused negligible direct damage despite having spread widely, and compliance costs that will no longer be incurred under the rule are minimal.

Based on this information, the APHIS Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

This final rule contains no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR parts 301 and 319 as follows:

PART 301 – DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

Subpart G [Removed and Reserved]

2. Subpart G, consisting of §§ 301.50 through 301.50-10, is removed and reserved.

PART 319 – FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.40-3 [Amended]

4. Section 319.40-3 is amended by:

- a. In paragraph (a)(1)(i)(A), removing “, and;” and adding “; and” in its place;
- b. Removing paragraph (a)(1)(i)(B); and
- c. Redesignating paragraph (a)(1)(i)(C) as (a)(1)(i)(B).

§ 319.40-5 [Amended]

5. Section 319.40-5 is amended by removing and reserving paragraph (m).

Done in Washington, DC, this 24th day of September 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.